

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JESUS JOSE VIDANA,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

Case No. EDCV 12-01003-JEM

MEMORANDUM OPINION AND ORDER
AFFIRMING DECISION OF THE
COMMISSIONER OF SOCIAL SECURITY

PROCEEDINGS

On June 22, 2012, Jesus Jose Vidana ("Plaintiff" or "Claimant") filed a complaint seeking review of the decision by the Commissioner of Social Security ("Commissioner") denying Plaintiff's applications for Social Security Disability Insurance benefits and Supplemental Security Income benefits. The Commissioner filed an Answer on October 9, 2012. On January 8, 2013, the parties filed a Joint Stipulation ("JS"). The matter is now ready for decision.

Pursuant to 28 U.S.C. § 636(c), both parties consented to proceed before this Magistrate Judge. After reviewing the pleadings, transcripts, and administrative record ("AR"), the Court concludes that the Commissioner's decision must be affirmed and this case dismissed with prejudice.

BACKGROUND

Plaintiff is a 51 year old male who applied for Social Security Disability Insurance benefits on July 29, 2009, and applied for Supplemental Security Income benefits on August 10, 2009. (AR 19.) The ALJ determined that Plaintiff has not engaged in substantial gainful activity since September 12, 2008, the alleged onset date. (AR 21.)

Plaintiff's claims were denied initially on December 21, 2009, and on reconsideration on May 6, 2010. (AR 19.) Plaintiff filed a timely request for hearing, which was held before Administrative Law Judge ("ALJ") Lisa D. Thompson on May 19, 2011, in West Los Angeles, California. (AR 19.) Claimant appeared at the hearing, testified, and was represented by counsel. (AR 19.) Medical expert ("ME") Betty L. Borden, M.D., and vocational expert ("VE") Gregory S. Jones also appeared and testified at the hearing. (AR 19.)

The ALJ issued an unfavorable decision on May 25, 2011. (AR 19-28.) The Appeals Council denied review on February 27, 2012. (AR 1-6.)

DISPUTED ISSUES

As reflected in the Joint Stipulation, Plaintiff raises only the following disputed issue as a ground for reversal and remand:

1. Whether the ALJ properly applied the Commissioner's Medical-Vocational Guidelines.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether the ALJ's findings are supported by substantial evidence and free of legal error. Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991) (ALJ's disability determination must be supported by substantial evidence and based on the proper legal standards).

Substantial evidence means "'more than a mere scintilla,' but less than a preponderance." Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is "such relevant evidence as a

1 reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S. at
2 401 (internal quotation marks and citation omitted).

3 This Court must review the record as a whole and consider adverse as well as
4 supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006). Where
5 evidence is susceptible to more than one rational interpretation, the ALJ’s decision must be
6 upheld. Morgan v. Comm’r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999).
7 “However, a reviewing court must consider the entire record as a whole and may not affirm
8 simply by isolating a ‘specific quantum of supporting evidence.’” Robbins, 466 F.3d at 882
9 (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)); see also Orn v. Astrue, 495
10 F.3d 625, 630 (9th Cir. 2007).

11 THE SEQUENTIAL EVALUATION

12 The Social Security Act defines disability as the “inability to engage in any substantial
13 gainful activity by reason of any medically determinable physical or mental impairment which
14 can be expected to result in death or . . . can be expected to last for a continuous period of not
15 less than 12 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Commissioner has
16 established a five-step sequential process to determine whether a claimant is disabled. 20
17 C.F.R. §§ 404.1520, 416.920.

18 The first step is to determine whether the claimant is presently engaging in substantial
19 gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the claimant is engaging
20 in substantial gainful activity, disability benefits will be denied. Bowen v. Yuckert, 482 U.S. 137,
21 140 (1987). Second, the ALJ must determine whether the claimant has a severe impairment or
22 combination of impairments. Parra, 481 F.3d at 746. An impairment is not severe if it does not
23 significantly limit the claimant’s ability to work. Smolen v. Chater, 80 F.3d 1273, 1290 (9th Cir.
24 1996). Third, the ALJ must determine whether the impairment is listed, or equivalent to an
25 impairment listed, in 20 C.F.R. Pt. 404, Subpt. P, Appendix I of the regulations. Parra, 481 F.3d
26 at 746. If the impairment meets or equals one of the listed impairments, the claimant is
27 presumptively disabled. Bowen v. Yuckert, 482 U.S. at 141. Fourth, the ALJ must determine
28

1 whether the impairment prevents the claimant from doing past relevant work. Pinto v.
 2 Massanari, 249 F.3d 840, 844-45 (9th Cir. 2001).

3 Before making the step four determination, the ALJ first must determine the claimant's
 4 residual functional capacity ("RFC"). 20 C.F.R. § 416.920(e). Residual functional capacity
 5 ("RFC") is "the most [one] can still do despite [his or her] limitations" and represents an
 6 assessment "based on all the relevant evidence." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).
 7 The RFC must consider all of the claimant's impairments, including those that are not severe.
 8 20 C.F.R. §§ 416.920(e), 416.945(a)(2); Social Security Ruling ("SSR") 96-8p.

9 If the claimant cannot perform his or her past relevant work or has no past relevant work,
 10 the ALJ proceeds to the fifth step and must determine whether the impairment prevents the
 11 claimant from performing any other substantial gainful activity. Moore v. Apfel, 216 F.3d 864,
 12 869 (9th Cir. 2000). The claimant bears the burden of proving steps one through four,
 13 consistent with the general rule that at all times the burden is on the claimant to establish his or
 14 her entitlement to benefits. Parra, 481 F.3d at 746. Once this prima facie case is established
 15 by the claimant, the burden shifts to the Commissioner to show that the claimant may perform
 16 other gainful activity. Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). To support
 17 a finding that a claimant is not disabled at step five, the Commissioner must provide evidence
 18 demonstrating that other work exists in significant numbers in the national economy that the
 19 claimant can do, given his or her RFC, age, education, and work experience. 20 C.F.R.
 20 § 416.912(g). If the Commissioner cannot meet this burden, then the claimant is disabled and
 21 entitled to benefits. Id.

22 THE ALJ DECISION

23 In this case, the ALJ determined at step one of the sequential process that Plaintiff has
 24 not engaged in substantial gainful activity since September 12, 2008, the alleged onset date.
 25 (AR 21.)

26 At step two, the ALJ determined that Plaintiff has the following combination of medically
 27 determinable severe impairments: bipolar disorder by history; adjustment disorder with mixed
 28 emotions; substance-induced mood disorder; fibromyalgia; hypertension; and obesity. (AR 21.)

1 At step three, the ALJ determined that Plaintiff does not have an impairment or
2 combination of impairments that meets or medically equals one of the listed impairments. (AR
3 22-23.)

4 The ALJ then found that Plaintiff has the RFC to perform light of work, as defined in 20
5 C.F.R. §§ 404.1567(b) and 416.967(b), with the following limitations:

6 . . . ability to lift/carry 20 pounds occasionally and 10 pounds frequently;
7 stand/walk two hours in an eight-hour workday; sit six hours in an eight-hour
8 workday; alternate between sitting/standing on an as needed-basis to relieve
9 pain; frequently balance; no more than occasionally climb, stoop, bend,
10 kneel, crouch, or crawl; avoid concentrated exposure to extreme cold; and
11 limited to simple work tasks with simple instructions; in a low stress
12 environment defined as no more than occasional changes in work settings;
13 with no more than occasional judgment/decision-making; and with no more
14 than interaction with supervisors, co-workers and the general public.

15 (AR 23.) In determining the above RFC, the ALJ made an adverse credibility finding
16 (AR 24), which Plaintiff does not challenge.

17 At step four, the ALJ found that Plaintiff is unable to perform his past relevant work as a
18 van driver and production line welder. (AR 26-27.) The ALJ also found that considering
19 Claimant's age, education, work experience, and RFC, there are jobs that exist in significant
20 numbers in the national economy that Claimant can perform including addressing clerk, sack
21 mender, and table worker. (AR 27.)

22 Consequently, the ALJ concluded that Claimant is not disabled within the meaning of
23 the Social Security Act. (AR 28.)

24 **DISCUSSION**

25 The ALJ decision must be affirmed. Pursuant to the framework of Rule 201.19 of the
26 Medical-Vocational Guidelines, Plaintiff is not disabled.

27 Preliminarily, the Court notes an error in the ALJ decision. The error is harmless. The
28 ALJ found that Plaintiff retained the residual functional capacity to perform light work. Because

1 Plaintiff could not perform the full range of light work, the ALJ called a vocational expert to
2 determine the extent to which Plaintiff's limitations eroded the light work occupational base.
3 (AR 27.) The ALJ analyzed the case pursuant to the framework of Rule 201.18. (AR 23, 27.)
4 At the hearing, however, the vocational expert identified three sedentary jobs. (AR 27, 66-67.)
5 Consequently, the ALJ should have relied on the framework of Rule 201.19 for sedentary work.
6 20 C.F.R. § 404, Subp. P, App. 2, Table No. 2; Cooper v. Sullivan, 880 F.2d 1152, 1157 (9th
7 Cir. 1989). As both rules indicate a finding of "not disabled," the error was harmless because
8 inconsequential to the ultimate non-disability determination. Robbins, 466 F.3d at 885.

9 Plaintiff contends that the ALJ erred in treating Plaintiff as an individual closer to age 50
10 and approaching advanced age at the time of the decision. Had the ALJ done so, Plaintiff could
11 have been found disabled under Rule 201.10. Plaintiff's contention has no merit.

12 Social Security Regulation 20 C.F.R. § 404.1563(b) provides as follows:

13 We will not apply the age categories mechanically in a borderline
14 situation. If you are within a few days to a few months of reaching an older
15 age category, and using the older age category would result in a
16 determination or decision that you are disabled, we will consider whether to
17 use the older age category after evaluating the overall impact of all the
18 factors of your case.

19 (Emphases supplied.)

20 The Ninth Circuit provided guidance in interpreting § 1563(b) in Lockwood v. Comm'r of
21 Soc. Sec. Adm., 616 F.3d 1068, 1071-72 (9th Cir. 2010). The Court explained that § 1563(b)
22 does not require an ALJ to use an older age category even if the claimant is within a few days
23 or months of reaching an older age category or to address or explain the age category utilized
24 for the decision. The requirement of § 1563(b) is for the ALJ to consider whether an older age
25 category should be chosen. Lockwood also makes clear that internal Social Security guidance
26 documents relied on by Plaintiff, Program Operations Manual System ("POMS") and Hearings
27 Appeals and Litigation Manual ("HALEX"), are not judicially enforceable. Id. at 1072-73.

1 Here, the ALJ did consider Plaintiff's age. The ALJ specifically found that Plaintiff was
2 47 years old, a younger individual, on the alleged disability onset date. (AR 27.) Plaintiff,
3 moreover, was not a few days or months from age 50 on the disability onset date. The ALJ
4 also considered Claimant's age in making the step five determination that there are jobs in the
5 national economy he could perform. As in Lockwood, the ALJ satisfied the consideration
6 requirement of § 1563(b).

7 Plaintiff argues that he turned 50 on August 15, 2011, only 82 days after the date of
8 decision. Plaintiff, however, ignores the portion of § 1563(b) that directs age to be considered
9 "after evaluating the overall impact of all the factors of your case." The overriding factor in the
10 ALJ decision is Plaintiff's serious lack of credibility. (AR 24-26.) Dr. Abujuela twice found no to
11 mild psychiatric limitations. (AR 24.) State agency physician Dr. Amada did not even believe
12 Claimant's alleged mental impairments were severe. (AR 25.) There were unremarkable
13 physical imaging and neurological exams. (AR 25.) The fibromyalgia finding was upheld only
14 by self-report. (AR 26.) Plaintiff does not challenge the ALJ's adverse credibility determination.
15 The ALJ did not apply age in a mechanical fashion and committed no error in not using an older
16 age category in evaluating Plaintiff's claim.

17 The ALJ's non-disability determination is supported by substantial evidence and free of
18 legal error.

19 **ORDER**

20 IT IS HEREBY ORDERED that Judgment be entered affirming the decision of the
21 Commissioner of Social Security dismissing this case with prejudice.

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23 DATED: January 22, 2013

/s/ John E. McDermott
JOHN E. MCDERMOTT
UNITED STATES MAGISTRATE JUDGE